

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRES C. TINNIN,	§
	§
Defendant Below-	§ No. 249, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0806042216
Plaintiff Below-	§
Appellee.	§

Submitted: December 23, 2009

Decided: March 8, 2010

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 8th day of March 2010, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In December 2008, a Superior Court jury found the defendant-appellant, Terres Tinnin (Tinnin), guilty of one count of delivery of cocaine. The Superior Court sentenced Tinnin to ten years at Level V incarceration, to be suspended after serving a three year mandatory prison term for decreasing levels of supervision. This is Tinnin's direct appeal.

(2) Tinnin's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Tinnin's counsel asserts that, based upon a

complete and careful examination of the record, there are no arguably appealable issues. By letter, Tinnin's attorney informed him of the provisions of Rule 26(c) and provided Tinnin with a copy of the motion to withdraw and the accompanying brief. Tinnin also was informed of his right to supplement his attorney's presentation. Tinnin has enumerated three issues for this Court's consideration. The State has responded to Tinnin's issues, as well as to the position taken by Tinnin's counsel, and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

(4) The record at trial fairly supports the following version of events. Two law enforcement officers arranged a controlled drug buy using a confidential informant. The officers testified that the informant was searched

¹*Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

prior to the arranged purchase and that he had no money or drugs on his person. The informant then was given a marked \$20 bill and was shown a picture of Tinnin and directed to purchase crack cocaine from him using the marked bill. The informant, who was under surveillance, met Tinnin on the street and asked to purchase \$20 worth of crack cocaine. The two men went into a house at 22nd and Pine Streets in Wilmington and were briefly out of view of the officers. The informant testified at trial that, while inside the house, he gave Tinnin the \$20 and in return, Tinnin broke off a chunk of crack cocaine from a larger rock and handed it to the informant. The informant then immediately returned to the officers and gave them the drugs he had purchased. After being shown the photograph again, the informant confirmed that Tinnin was the man who had sold him the drugs.

(5) In response to his counsel's Rule 26(c) brief, Tinnin raises three issues for the Court's consideration. First, he contends that it was plain error for the Superior Court to admit the medical examiner's report into evidence because the drugs that were tested did not match the description of the drugs that allegedly were purchased by the confidential informant. Second, Tinnin asserts that the Superior Court erred in denying his motion for judgment of acquittal because the evidence was insufficient to support his conviction. Finally, Tinnin contends that the State engaged in a discovery violation by

failing to produce a police report, which deprived defense counsel of the ability to conduct an effective cross-examination of the testifying officer. We address these claims in order.

(6) At trial, defense counsel stipulated to the admission of the medical examiner's report. Accordingly, we review Tinnin's first argument, challenging the admission of the report, for plain error.² Under the plain error standard of review, the error complained of must be so clearly prejudicial to a defendant's substantial rights as to jeopardize the integrity of the trial.³ In this case, Tinnin argues plain error because the description of the drugs tested in the report did not match the description of the drugs purportedly bought by the confidential informant. We find no merit to Tinnin's argument.

(7) The State, through the testimony of its witnesses, established a chain of custody for the drug evidence from the time it was purchased by the confidential informant until the time the cocaine was tested by the medical examiner. This chain of custody testimony eliminated the possibilities of misidentification or adulteration of the evidence "as a matter of reasonable probability."⁴ Because the State met its burden of properly authenticating the

² *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

³ *Id.*

⁴ *McNally v. State*, 980 A.2d 364, 371-72 (Del. 2009).

drug evidence,⁵ there was no plain error in the admission of the medical examiner's report. To the extent Tinnin asserts there was a difference between the description of the drugs in the report and the description given in the testimony, such an issue goes to the weight of the evidence and not to its admissibility.

(8) Next, Tinnin argues that the evidence presented at trial was insufficient to support his conviction. We review this claim, viewing the evidence in the light most favorable to the State, to determine whether any rational trier of fact could have the essential elements of the crime beyond a reasonable doubt.⁶ Here, there is no question that the State, through the testimony of the confidential informant and the officers involved in the controlled buy, established the essential elements of delivery of cocaine beyond a reasonable doubt. Although Tinnin suggests that the State's witnesses were not believable, the jury is solely responsible for determining the credibility of the witnesses.⁷ In this case, it was entirely within the purview of the jury to credit the testimony of the State's witnesses. Consequently, we reject Tinnin's second argument on appeal.

⁵ Del. Unif. R. Evid. 901(a) (2010).

⁶ *Hackett v. State*, 888 A.2d 1143, 1146 (Del. 2005).

⁷ *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

(9) Finally, Tinnin contends that the State violated its obligations under *Jencks v. United States*⁸ by failing to provide defense counsel with a copy of a police report prior to the reporting officer's testimony at trial. Tinnin argues that the State's discovery violation deprived him of his right to effective cross-examination of the testifying witness. We disagree.

(10) The record reflects that, during defense counsel's cross-examination of the officer, the officer indicated that he had created a report documenting the controlled purchase involving Tinnin but that he had not reviewed his own report prior to testifying. At the end of his cross-examination, defense counsel requested that a copy of the officer's report be produced. Just before it recessed for the day, the trial court directed the State to produce the report and indicated that it would address any issues related to the report on the following morning. At the start of trial the next morning, defense counsel indicated that he had no issues to raise and did not request to further cross-examine the witness. In the face of defense counsel's silence when given the opportunity to address the issue, we find no support for

⁸ 353 U.S. 657 (1957).

Tinnin's assertion that the State never produced the report, nor do we find any prejudice to Tinnin given defense counsel's failure to pursue the issue.⁹

(11) This Court has reviewed the record carefully and has concluded that Tinnin's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Tinnin's counsel has made a conscientious effort to examine the record and the law and has properly determined that Tinnin could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁹ See *Brown v. State*, 947 A.2d 1062, 1073 (Del. 2007) (holding that the State's inadvertent failure to timely provide a witness statement did not warrant a mistrial because there was no prejudice).